

JAN 18 2008

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCISCO LEDESMA-ACEVES,

Defendant - Appellant.

No. 07-30017

D.C. No. CR-06-00007-FVS

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Eastern District of Washington  
Fred L. Van Sickle, District Judge, Presiding

Submitted January 14, 2008<sup>\*\*</sup>

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Francisco Ledesma-Aceves appeals from his 77-month sentence imposed  
after his guilty-plea conviction for being an alien found in the United States

---

<sup>\*</sup> This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Ledesma-Aceves contends that the district court violated his Fifth and Sixth Amendment rights pursuant to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because the indictment did not allege, he did not admit, and a jury did not find beyond a reasonable doubt, that he had been deported subsequent to his drug trafficking conviction. We disagree.

The record reflects that the dates of Ledesma-Aceves' prior removal were alleged in the indictment and that he admitted all of these dates in his Rule 11 hearing. *See United States v. Salazar-Lopez*, 506 F.3d 748, 751-55 (9th Cir. 2007) (noting that it is sufficient if the date of removal is alleged in the indictment and admitted by the defendant or found by the jury); *see also United States v. Calderon-Segura*, No. 05-50820, 2008 WL 80705, at \*5-6 (9th Cir. Jan. 9, 2008). Thus, the district court's application of § 1326(b) did not result in *Apprendi* error. *See Salazar-Lopez*, 506 F.3d at 751-55; *see also Calderon-Segura*, No. 05-50820, 2008 WL 80705, at \*5-6.

Ledesma-Aceves also contends that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), is invalid and should not be relied upon. He further contends that under the constitutional avoidance doctrine, *Almendarez-Torres* is limited to

challenges to the indictment where the defendant admits the prior conviction during a guilty plea. These contentions are foreclosed. *See Salazar-Lopez*, 506 F.3d at 751 n.3.

**AFFIRMED.**